

Kim J Dockstader, ISB No. 4207
Gregory C. Tollefson, ISB No. 5643
Teresa A. Hill, ISB No. 6175
STOEL RIVES LLP
101 South Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Fax Number: (208) 389-9014
kjdockstader@stoel.com
gctollefson@stoel.com
tahill@stoel.com

Attorneys for Defendant, Micron Electronics, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

KIMBERLEY SMITH, MICHAEL B.
HINCKLEY, JACQUELINE T. HLADUN,
MARILYN J. CRAIG, JEFFERY P.
CLEVENGER, and TIMOTHY C.
KAUFMANN, individually and on behalf of
those similarly situated,

Plaintiffs,

vs.

MICRON ELECTRONICS, INC., a
Minnesota corporation,

Defendant.

Case No. CIV 01-0244-S-BLW

**FIRST AFFIDAVIT OF GREGORY C.
TOLLEFSON IN SUPPORT OF
DEFENDANT'S RESPONSE TO
PLAINTIFFS' MOTION FOR
CONDITIONAL CERTIFICATION**

STATE OF IDAHO)
) ss.
County of Ada)

I, Gregory C. Tollefson, being duly sworn, depose and say:

**FIRST AFFIDAVIT OF GREGORY C. TOLLEFSON IN SUPPORT OF
DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR CONDITIONAL
CERTIFICATION - 1**

1. I am an attorney at Steel Rives, LLP and counsel of record for Defendant Micron Electronics, Inc. I am familiar with this case and make this affidavit based on my personal knowledge. I submit this affidavit in support of Defendant's Response to Plaintiffs' Motion for Conditional Certification.

2. Attached hereto as Exhibit "A" is a true and correct copy of Exhibit No. 24 to the Deposition of James Wells, taken on January 9, 2002 in this case. Deposition Exhibit No. 24 is an excerpt on overtime from Micron Electronics, Inc.'s Team Member Handbook which was in effect from April 1, 1996 to approximately January of 1999.

3. Attached hereto as Exhibit "B" is a true and correct copy of Exhibit No. 26 to the deposition of Mr. Wells. Deposition Exhibit No. 26 is an excerpt on timekeeping from Micron Electronics, Inc.'s Employment Policy Manual which was in effect from approximately January of 1999 to February of 2001.

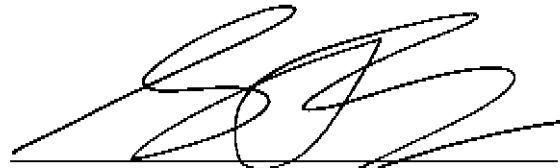
4. Attached hereto as Exhibit "C" is a true and correct copy of Exhibit No. 27 to the deposition of Mr. Wells. Deposition Exhibit No. 27 is an excerpt on timekeeping from Micron Electronics, Inc.'s Employment Policy Manual which was revised in March of 2001 and was in effect from approximately March 2001 to May 2001.

5. Attached hereto as Exhibit "D" is a true and correct copy of Exhibit No. 17 to the Deposition of Michael B. Hinckley, taken on January 8, 2002 in this case. Deposition Exhibit No. 17 is an excerpt on overtime from Micron Electronics, Inc.'s Employment Policy Manual which was revised in March of 2001 and was in effect from approximately March 2001 to May 2001.

6. Attached hereto as Exhibit "E" is a true and correct copy of a letter dated July 25, 2002 from Kim J Dockstader to Dan Williams concerning deposition scheduling for Tawni Weaver.

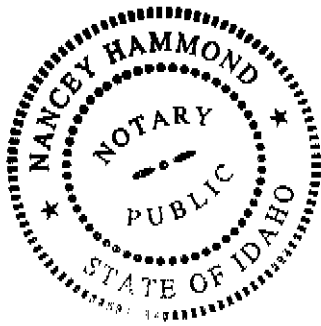
7. Attached hereto as Exhibit "F" is a true and correct copy of an excerpt from a status conference transcript in Lori Barton v. Albertson's, Inc. (Case No. CV 97-0159-S-BLW) and James G. Rose v. Albertson's, Inc. (Case No. CV 97-183-S-BLW). The status conference was held before the Honorable B. Lynn Winmill on May 7, 1998.


DATED this 21st day of August, 2002.



Gregory C. Tollefson

SUBSCRIBED AND SWORN TO BEFORE ME this 21st day of August, 2002.





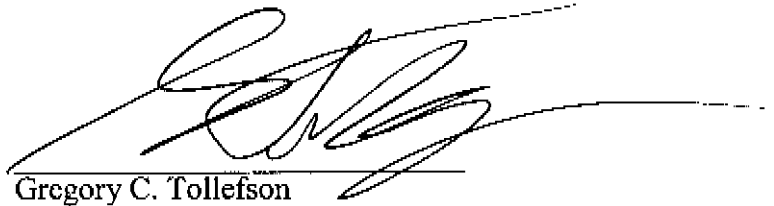
Notary Public of Idaho
Residing at: Boise
My Commission Expires: 6/12/03

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of August, 2002, a true and correct copy of the foregoing **FIRST AFFIDAVIT OF GREGORY C. TOLLEFSON IN SUPPORT OF DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR CONDITIONAL CERTIFICATION** was served upon the following:

William H. Thomas
Daniel E. Williams
HUNTLEY, PARK, THOMAS,
BURKETT, OLSEN & WILLIAMS
250 S. Fifth Street, Suite 660
Boise, Idaho 83701-2188

☒ By U.S. Mail
☐ By Hand Delivery
☒ By Facsimile
☐ By Overnight Delivery



Gregory C. Tollefson

EXHIBIT “A”

MICRON
ELECTRONICS, INC.



TEAM

MEMBER
HANDBOOK

DeH's	24
EXHIBIT	
Wells	
DATE	1-9-02

TICKET & ASSOC.
BOOK 0

For further information regarding job modifications and accommodations, a team member should contact his or her department management.

Team members seeking an adjustment to their schedule in order to seek regular medical treatment should contact the Human Resource department regarding the availability of leave for this purpose.

JOB OPPORTUNITY PROGRAM

Micron encourages promotion-from-within whenever practical and uses the Job Opportunity Program to provide opportunities for team members. Appropriate job openings are posted internally, allowing qualified team members to apply, for a minimum of seven days on Job Opportunity bulletin boards.

Team members apply for posted positions by completing an Internal Job Application form, obtaining supervisor and department manager approvals, and submitting the application to the Human Resource department by the posting deadline. If the position of interest is at a different site or a different Micron company, the team member's vice president approval is also needed.

Team members meeting the following requirements may apply for internal positions by the posted deadline:

- ◆ Work experience and/or education that meet the requirements of the available position.
- ◆ Satisfactory performance evaluations and work history.
- ◆ Continuous employment at Micron for a minimum of one year in the present department, with at least six months in the present position. (Approval is determined at the discretion of the team member's department manager if the team member does not meet the length of service requirement.)

Transfers within a department may be granted at the discretion of the department manager. Micron retains the discretion to recruit and hire from outside the Company.

Team members interested in positions not covered by the Job Opportunity Program should discuss this interest with their supervisor or department manager. Supervisors or managers interested in interviewing team members from another department for positions which may not be covered by the Job Opportunity Program should always discuss this interest with the team member's manager prior to an interview.

NOTICE OF RESIGNATION

Micron does not maintain a policy requiring advance notice for separation of employment. Depending upon individual circumstances, the supervisor may request the team member to continue to work for a reasonable period of time to allow for a smooth job transfer or time to hire and train a replacement. However, if the team member chooses to give notice and is asked to leave prior to the end of the notice period, the Company has no obligation to pay a team member for this period.

OVERTIME

Team members may be required to work overtime. Overtime may be necessary when it is not

possible to adjust staffing or team member work schedules to provide essential coverage. Overtime work must be approved in advance by a team member's supervisor. Non-exempt team members are paid time and one-half for actual hours worked in excess of 40 hours in any work week.

POSITION ON UNIONS

Micron is a nonunion company, and it is the Company's desire to remain so. The Company recognizes that team members have the freedom to decide whether to join a union. However, Micron believes that the best and most rewarding employment results from a direct relationship between a team member and his or her supervisor. We believe putting a union or third party between supervisors and team members does not promote teamwork, nor is it the most effective way to solve problems or concerns.

Unions cannot guarantee pay, benefits, jobs, or continuous employment—regardless of what they may indicate. Rewards and job security can only be created by everyone working together to make Micron a profitable and healthy company.

EXHIBIT “B”

TIMEKEEPING - NON-EXEMPT
Policy 3.15

PURPOSE

To ensure accurate recording of time worked for all non-exempt (hourly) employees.

SCOPE

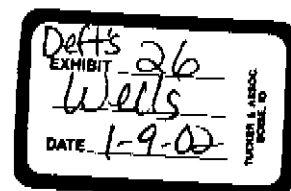
This policy applies to all non-exempt employees located at the Company's, facilities, subsidiaries, and divisions. This policy does not apply to exempt (salaried) employees.

POLICY

- A. Non-exempt employees are expected to accurately record the time they begin and end their work, as well as the beginning and ending time of each meal period. They should also record the beginning and ending time of any split shift or departure from work for personal reasons. Time is recorded by accessing TIMESHEET at the VAX prompt and entering total daily hours worked.
- B. Prior to submission of timesheets for supervisor approval, non-exempt employees are responsible for reviewing their timesheets to verify the accuracy of all time recorded.
- C. In the event that there is an error in the amount of pay, non-exempt employees should promptly bring the discrepancy to the attention of their supervisor so that corrections can be made as quickly as possible.
- D. Non-exempt employees are not required to use Time Off Plan (TOP) hours to reach their scheduled number of hours per day or to reach forty (40) hours per week. They can choose to take unpaid time away from work without using TOP hours; however, all time away from work must be approved in advance by the supervisor. Unscheduled time off requires the use of TOP hours, if available, to reach the scheduled number of hours regularly worked.
- E. Altering, falsifying, tampering with time records, or recording time on another employee's timesheet may result in disciplinary action, up to and including termination.
- F. For additional information, contact the Human Resources (Compensation) department.

Effective: 1/28/99
Cross Reference Policies:
Pay Practices (3.10)
Time Off Plan (TOP) (4.05)

3.15-1



M002167

EXHIBIT “C”

**TIMEKEEPING – NON-EXEMPT
Policy 3.15**

PURPOSE

To ensure accurate recording of time worked for all non-exempt (hourly) employees.

SCOPE

This policy applies to all non-exempt employees located at the Company's, facilities, subsidiaries, and divisions. This policy does not apply to exempt (salaried) employees.

POLICY

- A. Non-exempt employees are expected to accurately record all time worked, including the time they begin and end their work, as well as the beginning and ending time of each meal period. They should also record the beginning and ending time of any split shift or departure from work for personal reasons. No work should be performed off the clock. All time worked must be recorded. Failure to record all time worked will subject the employee to disciplinary action up to and including termination. Time is recorded by accessing me@micronpc.com via the Infonet and confirming or modifying total daily hours worked on the timesheet.
- B. Prior to submission of timesheets for supervisor approval, non-exempt employees are responsible for reviewing their timesheets to verify the accuracy of all time recorded.
- C. In the event that there is an error in the amount of pay, non-exempt employees should promptly bring the discrepancy to the attention of their supervisor so that corrections can be made as quickly as possible.
- D. Non-exempt employees may use Time Off Plan (TOP) hours to reach their scheduled number of hours per day or to reach forty (40) hours per week. They can choose to take unpaid time away from work without using TOP hours; however, all time away from work must be approved in advance by the supervisor. Unscheduled time off requires the use of TOP hours, if available, to reach the scheduled number of hours regularly worked. The TOP Policy affects this section.
- E. Altering, falsifying, tampering with time records, or recording time on another employee's timesheet may result in disciplinary action, up to and including termination.
- F. For additional information, contact the Payroll Department or Human Resources Department.

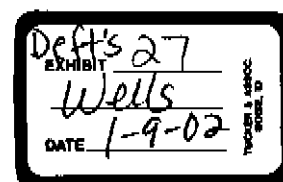


EXHIBIT “D”

OVERTIME PAY – NON-EXEMPT

Policy 3.20

PURPOSE

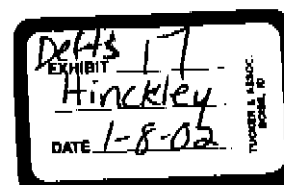
To provide guidelines and conditions applicable to non-exempt (hourly) employees for overtime scheduling and payment of overtime.

SCOPE

This policy applies to all non-exempt employees located at the Company's facilities, subsidiaries, and divisions. This policy does not apply to exempt (salaried) employees.

POLICY

- A. When business needs or operating requirements cannot be met during regularly scheduled working hours, non-exempt employees will, in so far as practicable, be given the opportunity to volunteer for overtime work assignments. Some circumstances may require mandatory overtime.
- B. All overtime work must receive prior approval from the non-exempt employee's supervisor or manager. Unauthorized overtime is expressly prohibited.
- C. Overtime compensation is paid to all non-exempt employees in accordance with applicable federal and state wage and hour regulations.
- D. Overtime pay is based on actual hours worked. Time off for holidays, vacation, illness, jury duty, bereavement, or any leave of absence will not be considered hours worked for purposes of calculating overtime.
- E. Failure to work scheduled overtime, or working overtime without prior authorization from the non-exempt employee's supervisor or manager, may result in disciplinary action, up to and including termination of employment.
- F. Non-exempt employees are not allowed to work "off the clock." All time worked by a non-exempt employee (including overtime) must be accurately recorded for the week in which the work is performed.
- G. Compensatory time (defined as time away from work instead of payment for time worked) will not be granted to non-exempt employees. When non-exempt employees work overtime, they will be paid for all time worked.
- H. Averaging of hours worked over different workweeks for purposes of calculating overtime pay is prohibited. For example, working forty-five (45) hours during one week and working thirty-five (35) hours the next. These hours must not be averaged to indicate that forty (40) hours were worked each week.



- I. This policy does not apply to exempt employees. Exempt employees receive compensation in the form of a salary for performing their job responsibilities. Exempt employees do not receive overtime pay, and their positions may require working more than forty (40) hours per week. Exempt employees who need not be paid overtime compensation, include those employees the Company determines meet certain tests and rules under applicable law regarding job duties and responsibilities and who are compensated on a salary basis at not less than required amounts.
- J. For additional information, employees should contact the Human Resources Representative or the Payroll Department.

Cross Reference Policies:

Workplace Conduct (1.20)

Timekeeping -- Non-Exempt (3.15)

EXHIBIT “E”



101 S. Capitol Boulevard, Suite 1200
Boise, Idaho 83702
main 208.389.9000
fax 208.389.9040
www.stoel.com

July 25, 2002

KIM J DOCKSTADER
Direct (208) 387-4287
kjdockstader@stoel.com

VIA FACSIMILE AND MAIL (208) 345-7894

Daniel E. Williams
Huntley, Park, Thomas, Burkett,
Olsen & Williams
250 S. Fifth St., Suite 660
P.O. Box 2188
Boise, ID 83701-2188

Re: Smith et al. v. Micron Electronics, Inc.

Dear Dan:

Enclosed is a Notice to Vacate the Continued Deposition Duces Tecum of Tawni Weaver. We have agreed to vacate Ms. Weaver's deposition based on your representation that she continues to be heavily medicated and is not well suited to have her deposition taken.

At this time, we ask that you make Ms. Weaver available for deposition on a date when she is not on her medications or provide us with medical certification that she must continue to take her medications and there will not be an opportunity for her deposition in the near future.

Very truly yours,


Kim J Dockstader

KJD:kjd

EXHIBIT “F”

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

LORI BARTON on behalf of herself)
and others similarly situated,)

Plaintiff,)

vs.)

ALBERTSON'S, INC.)

Defendant.)

Case No. 97-0159-S-BLW

JAMES G. ROSE, by and through)
Laree Lovan, his natural mother)
and guardian ad litem, and on)
behalf of himself and all others)
similarly situated,)

Plaintiff,)

vs.)

ALBERTSON'S, INC., a Delaware)
corporation,)

Defendant.)

Case No. CV 97-183-S-BLW

STATUS CONFERENCE

HELD BEFORE THE HONORABLE B. LYNN WINMILL

AT BOISE, IDAHO

MAY 7, 1998

Court Reporter: JOSEPH P. RODEN, C.S.R.
Boise, Idaho

Archibut
12

A P P E A R A N C E S:

For the Plaintiff
Barton:

Nevin, Kofoed & Herzfeld
BY: ALAN HERZFELD, ESQ. and
SCOTT MCKAY, ESQ.
303 West Bannock Street
Post Office Box 2772
Boise, Idaho 83701-2772

- and -

Webster, Mrak & Blumberg
BY: JAMES H. WEBSTER, ESQ. and
RICHARD P. BLUMBERG, ESQ.
1325 Fourth Avenue, Suite 600
Seattle, Washington 98101

For the Plaintiff
ROSE:

Gordon Law Offices, Chartered
BY: PHILIP H. GORDON, ESQ.
1602 West Franklin Street
Boise, Idaho 83702

For the Defendant
Albertsons:

Hawley Troxell Ennis & Hawley
BY: CRAIG L. MEADOWS, ESQ.
877 Main Street, Suite 1000
Post Office Box 1617
Boise, Idaho 83701-1617

- and -

Akin, Gump, Strauss, Hauer & Feld, LLP
BY: RANDALL L. SAROSDY, ESQ. and
RICHARD N. APPEL, ESQ.
1333 New Hampshire Avenue, N.W., Suite 400
Washington, D.C. 20036

1 than that.

2 The second issue, which is the tolling issue, is
3 directly related to how far out we push the resolution of
4 the notice issues. I'm aware that the putative collection
5 action members, who are not named Plaintiffs, have a
6 two-year statute of limitations, or three years if there is
7 a willful violation proved, and that that is not tolled
8 until they obtain their notice and file their consents to
9 opt into the collective action.

10 If the limitation period is not tolled, claims
11 presumably will be expiring on a daily basis or at least
12 they will be limited. And of course, that's part of what
13 the FLSA statutory scheme provides for, is protection to
14 employers like Albertson's from stale claims. But, the
15 expiration process can, of course, create an unfair problem
16 for the Plaintiffs since these claims are being eliminated
17 daily as we are going through this process of trying to
18 approve the notice.

19 Now, it appears to me that I would have authority
20 to simply issue the notice, I guess, and then clean up
21 later. But, that's not the way I prefer to handle this and
22 that is why I think the third alternative makes more sense.
23 In fact, Judge Illston, it appears to me, that's about what
24 she did, was to approve that without discovery or at least
25 without extensive discovery and before defining in any way

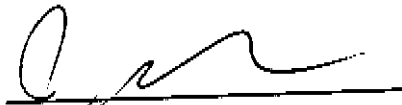
1 the scope of the collective action. I think there's
2 authority to do so from my review of the case law. That
3 option has real benefits since it allows us to cut off the
4 statute of limitations and the problems that that's going
5 to create for the potential claimants. But, as I indicated
6 earlier, it's not very judicially efficient because we may
7 have to go back and revisit the issue, redefine and narrow
8 the scope of the class and waste a lot of time doing that.

9 Given that, it seems to me that what we need to
10 do is strike a balance between these competing interests
11 and I think the proper balance is to provide Albertson's
12 with a full opportunity to explore the issues, the factual
13 issues, which they will conduct discovery concerning, to
14 also bring appropriate motions which may limit the scope of
15 the proceeding. But, I think the flip side of that is that
16 there needs to be an agreement to toll the statute of
17 limitations until we reach that point. And I know
18 Albertson's has been willing to do that voluntarily up to
19 this point.

20 I guess where I am at at this point is to agree
21 to the third alternative, which Mr. Webster has proposed in
22 his litigation plan, but on the condition that Albertson's
23 agrees to further toll the statute of limitations until we
24 can resolve the class action and collective action issues
25 and the notice issues. It's possible that I may have the

REPORTER'S CERTIFICATE

I, JOSEPH RODEN, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



Joseph Roden

5-13-98

Date